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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,362	06/25/2001	Brian Mark Shuster	409475-38	1669

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EXAMINER	
CHAMPAGNE, DONALD	
ART UNIT	**PAPER NUMBER**
3622	

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/893,362	SHUSTER ET AL.	
	Examiner	Art Unit	
	Donald L. Champagne	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 June 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed with an amendment on 21 February 2006 have been fully considered but they are not persuasive. The arguments are addressed by revision of the last rejection and explicitly at para. 7 and 8 below.

Priority

2. The examiner confirms that this application has benefit of provisional applications No. 60213396 and 60213827 under 35 U.S.C. 119(e). An objection to the priority claim was raised in the last Office action (mailed on 21 November 2005). Applicant's reply (2nd para. on p. 7) adequately addressed that objection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being obvious over Hamzy et al. (US006636247B1) in view of Net-mercial.com (PR Newswire, 18 August 1999).

5. Hamzy et al. teaches (independent claims 1 and 17) a method and system for providing advertising in a computer network, the method comprising: receiving a request from at least one user for delivery of a user-selected Web page associated with a Web site, and selecting at least one advertisement for delivery to said at least one user in conjunction with said user-selected Web page (*an advertisement associated with that web page*, col. 2 lines 12-15), said advertisement being selected from a plurality of advertisements (col. 4 lines 41-44); and delivering said at least one advertisement in a format that precludes said at least one user from bypassing any portion of said ad (col. 2 lines 25-30).

6. Hamzy et al. does not teach playback of an audio ad. Net-mercial.com teaches playback of an audio ad (end of the second para., marked reference "A"). Because Net-mercial.com is referred to by Hamzy et al. (front page, under *OTHER PUBLICATIONS*), because multimedia ads attract customers, and because applicant discloses that multimedia content is becoming more prevalent (para. [0007] of the published application, US 20020022999A1), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Net-mercial.com to those of Hamzy et al.

7. Applicant argues (pp. 7-8) that Hamzy et al. fails to teach "playback". The rejection states that playback is taught by Net-mercial.com, not by Hamzy et al. Applicant argues further that Hamzy et al. is concerned with a different problem. Hamzy et al. teaches several options at col. 2 lines 10-30. The cited option, at col. col. 2 lines 25-30, reads on the claimed invention.

8. Applicant also argues (p. 8, 2nd para.) that Net-mercial.com teaches away from the instant invention by "giving the consumer complete control of the ad". Net-mercial.com teaches several options at the top of p. 2/2, marked reference "B". For most of these options, including the first (*A timer informs the user that the ad is only temporary ...*), Net-mercial.com does not teach "giving the consumer complete control of the ad".

9. Hamzy et al. also teaches claims 2, 3, 18 and 19 (col. 6 lines 38-50, where *a series of buttons* reads on a plurality of input devices).

10. Claims 5 and 21 are admitted prior art (para. [0006] of the [published application).

11. Net-mercial.com also teaches claims 13-16 and 29-32.

12. Neither reference teaches claims 6, 7, 22 and 23. However, they are obvious common commercial practice because ordinary money reads on "credits".

13. Neither reference teaches claims 4, 8-12, 20 and 24-28. These were common practices at the time of the instant invention. (Claims 8-12 and 24-28 describe ad targeting.) It is obvious to use common practices. Official notice of these common knowledge or well known in the art statements was taken in the last Office action (mailed on 21 November 2005, para. 13). These statements are taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

14. Neither reference teaches claim 33. Official notice is taken (MPEP § 2144.03) that pop-up were common at the time of the instant invention. It is obvious to use common practices.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

16. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717. The fax phone number for all *formal* matters is 571-273-8300.

18. The examiner's supervisor, Eric Stamber, can be reached on 571-272-6724.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

20. **AFTER FINAL PRACTICE** – Consistent with MPEP § 706.07(f) and 713.09, prosecution generally ends with the final rejection. Examiner will grant an interview after final only when applicant presents compelling evidence that "disposal or clarification for appeal may be accomplished with only nominal further consideration" (MPEP § 713.09). The burden is on applicant to demonstrate this requirement, preferably in no more than 25 words. Amendments are entered after final only when the amendments will clearly simplify issues, or put the case into condition for allowance, clearly and without additional search or more than nominal consideration.

21. Applicant may have after final arguments considered and amendments entered by filing an RCE.

22. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

Donald L. Champagne
Primary Examiner
Art Unit 3622

20 May 2006

DONALD L. CHAMPAGNE
PRIMARY EXAMINER